

REMARKS

The Examiner is thanked for the performance of a thorough search. The amendments to the claims and the new claims do not add any new matter to this application. Furthermore, the amendments to the claims were made to improve the readability and clarity of the claims and not for any reason related to patentability. All issues raised in the Office Action mailed May 24, 2007 are addressed hereinafter.

I. ISSUES NOT RELATING TO PRIOR ART: CLAIMS 29-32—35 U.S.C. § 112,
SECOND PARAGRAPH

Claims 29-32 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite. Claims 29-32 have been amended to address the specific issues identified in the Office Action. Support for the phrase “a negative of a cost of reaching the available node from the first node” is found in the specification at least at paragraph [0057]. Accordingly, reconsideration and withdrawal of the rejection of Claims 29-32 under 35 U.S.C. § 112, second paragraph, is respectfully requested.

II. ISSUES RELATING TO PRIOR ART

A. CLAIMS 1-28—AKAHANE—35 U.S.C. § 102(e)

Claims 1-28 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by *Akahane*, U.S. Publication No. US 2003/0053414 A1. The rejection is respectfully traversed.

Claim 1 recites one or more features that are not taught or suggested by *Akahane*. For example, Claim 1 requires recognizing a tunneled packet comprising an address **directly** identifying a neighbor node to the forwarding node as tunnel end point.” *Akahane*, on the other hand, describes a system where a **label** identifies the **penultimate node**, not the tunnel end point. FIG. 9 in *Akahane* shows that label L31 is used to transfer packets on a network segment 1020-2. The label L31 identifies the ingress port on the CR3 node, which is not the tunnel endpoint. The label L31 does not directly identify a tunnel end point, as claimed. Instead, to identify the tunnel endpoint, *Akahane* uses another label L32, as shown in FIG. 8. In FIG. 8 label L32 is not

popped. Furthermore, labels L12 and L22 in FIG. 9 *Akahane* are not used to identify the neighbor node to the forwarding node as they are simply treated as payload data. One benefit of identifying a tunnel endpoint directly is for a penultimate node to handle multiple tunnel endpoints independently i.e. selectively removing or keeping the outermost label. These features are not taught or suggested by *Akahane*.

In independent Claim 10, the feature “means for recognizing a tunneled packet comprising an address directly identifying a neighbor node as tunnel end point” is not taught or suggested by *Akahane* for the same reasons given above for claim 1.

Independent Claim 19 recites the feature of “constructing as a repair path around a component in the data communications network a tunnel having a tunnel end point prior to issuing a notification from the notifying node,” which is not anticipated by *Akahane*. First, *Akahane* is silent with respect to the notifying node issuing a notification. Second, *Akahane* **teaches away** from the feature, because all of the repair path labels are set and the CR3 router recognizes a tunnel endpoint **before** the tunnel is established. As stated in *Akahane* at paragraph 50, “In FIGS. 7 through 9 ... as a common backup LSP for the LSP1 and the LSP2 in the case when the line 1020-1 has a fault, an LSP3 is set between the routers CR1, CR3 and CR2.” As also stated by the Office Action, CR3, the forwarding node, recognizes that CR2 is a tunnel end point via the distribution protocol referred to in paragraph 9 by *Akahane*. Therefore, ignoring the mechanism by which a tunnel endpoint is established at the forwarding node, according to *Akahane* the tunnel endpoint is established at the forwarding node **prior** to establishing the tunnel.

Independent Claim 24 recites the feature “means for constructing as a repair path around a component in the data communications network a tunnel having a tunnel end point in which the means for constructing the repair path is arranged to construct the repair path prior to issue of a notification from a means for notifying,” which is not taught or suggested by *Akahane* for the reasons given above for claim 19.

Applicants have identified at least one feature of independent claims 1, 10, 19, and 24 that is not found in *Akahane*. Therefore, *Akahane* cannot anticipate claims 1, 10, 19, and 24, and the rejection is traversed. Reconsideration is respectfully requested.

Each of claims 2-9 depends from Claim 1 and includes all of the features of Claim 1. Claims 11-18 all depend from Claim 10 and include all of the features of Claim 10. Claims 20, 21, and 23 all depend from Claim 19 and include all of the features of Claim 19. Claims 25, 26, and 28 all depend from Claim 24 and include all of the features of Claim 24. Therefore, Claims 2-9, 11-18, 20, 21, 23, 25, 26 and 28 are patentable over *Akahane* for at least the reasons set forth herein with respect to Claim 1, Claim 10, Claim 19 and Claim 24.

Accordingly, reconsideration and withdrawal of the rejection of Claims 2-9, 11-18, 21, 23, 25, 26 and 28 is respectfully requested.

B. CLAIMS 29-32—NAGATA—35 U.S.C. § 102(e)

Claims 29-32 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Pub. No. US2005/0152289 A1 (“Nagata”). The rejection is respectfully traversed.

Nagata does not qualify as a prior art reference under § 102(e) and must be removed as a reference. In particular, Nagata does not qualify as prior art under § 102(e) because the WIPO publication of the Nagata reference was not in English.

The procedure for determining whether a reference qualifies as prior art under § 102(e) is summarized in the MPEP in a Figure entitled “Flowcharts for 35 U.S.C. § 102(e): Apply to all applications and patents, whenever file Chart II: For WIPO publications and International Applications (IA)s”, at page 700-41, MPEP 8th Rev. 5, August 2006. The parent PCT international application for Nagata was filed on February 19, 2003 as PCT/JP03/01797, after November 29, 2000, and therefore the answer to the first question in the figure is “Yes.”

Nagata designated the United States; however, the international application was not published in English—it was published in Japanese. Applicant submits concurrently herewith (see EXHIBIT, attached at the end of this reply) a copy of the first page of WIPO publication WO2004/075486, which references at field 21 the PCT international application number

PCT/JP03/01797, and which is in Japanese. Therefore, the answer to the second question is “No.”

Accordingly, Nagata is not entitled to an effective filing date, as a reference, of the international filing date, and Nagata is not entitled under § 102(e) to an effective date as a reference earlier than its actual US publication date. Therefore, the effective filing date of Nagata as a reference is the US application filing date of February 8, 2005.

The US filing date of February 8, 2005 is later than the filing date of the present application, which is July 13, 2003; therefore, Nagata is not prior art to the present application. Applicants respectfully request removal of Nagata as a reference and withdrawal of the rejection.

III. CONCLUSIONS

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested.

A petition for an extension of time for one (1) month, and otherwise to the extent necessary to make this reply timely filed, is hereby made pursuant to 37 C.F.R. 1.136. The extension of time fee is submitted concurrently herewith. If any applicable fee is missing or insufficient, the Commissioner is authorized throughout the pendency of this application to charge any applicable fee to our Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

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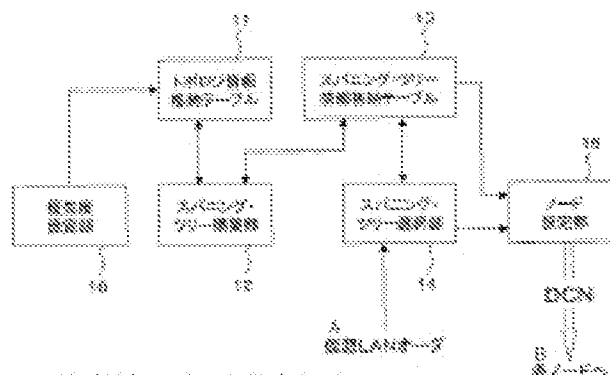
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SECRET



11. TOPOLGY INFORMATION STORAGE TABLE
12. SPANNING TREE INFORMATION STORAGE TABLE
13. PRIORITY SETTING UNIT
14. SPANNING TREE BUILDING UNIT
15. SPANNING TREE SELECTION UNIT
16. NOISE SETTING UNIT
17. A. VIRTUAL LAN ORDER
18. B. TO EACH NOISE

(57) Abstract: A spanning tree building unit (12) builds a plurality of spanning trees according to the network topology and registers them in a spanning tree information storage table (13). A spanning tree selection unit (14) selects a spanning tree in which the communication resource is utilized most efficiently from the plurality of spanning trees registered in the spanning tree information storage table (13). A node setting unit (15) sets mapping information between the requested virtual LAN and the selected spanning tree in each node.

(9) 第3図: スパニング・フリー演算部(12)は、ネットワークのトポロジに基づいて第2図のスパニング・フリーを構築し、スパニング・フリー演算部テーブル(13)に登録する。スパニング・フリー演算部(14)は、スパニング・フリー演算部テーブル(13)に登録されている第2図のスパニング・フリーの中から、通信

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